

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1968**  
**97TH GENERAL ASSEMBLY**

5975S.02T

2014

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**AN ACT**

To repeal sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, RSMo, and to enact in lieu thereof thirteen new sections relating to health organizations.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, to read as follows:

354.465. 1. The director, or any duly appointed representative, may make an examination of the affairs of any health maintenance organization as often as he deems it necessary for the protection of the interests of the people of this state, but not less frequently than once every [three] **five** years.

2. All costs incurred by the state as a result of making examinations under this section shall be paid by the organization being examined and remitted [directly to the examiner or examiners conducting the examination on billings approved by the director] **as provided in section 374.160.**

375.1250. As used in sections 375.1250 to 375.1275 and in the Risk-Based Capital (RBC) Instructions, the following terms mean:

(1) "Adjusted RBC report", an RBC report which has been adjusted in accordance with subsection 5 of section 375.1252;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 (2) "Corrective order", an order issued by the director specifying corrective actions  
6 which the director has determined are required;

7 (3) "Director", the director of the department of insurance, financial institutions and  
8 professional registration;

9 (4) **"Domestic health organization", a health organization domiciled in this state;**

10 (5) "Domestic insurer", any insurance company domiciled in this state;

11 (6) **"Foreign health organization", a health organization that is licensed to do  
12 business in this state under chapter 354 but is not domiciled in this state;**

13 [(5)] (7) "Foreign insurer", any insurance company which is licensed to do business in  
14 this state under section 375.791, but is not domiciled in this state;

15 (8) **"Health organization", a health services corporation, health maintenance  
16 organization, limited health service organization, dental or vision plan, hospital, medical  
17 and dental indemnity or service corporation, or other managed care organization licensed  
18 under chapter 354, but not an organization that is defined as a life and health insurer or  
19 property and casualty insurer by this section and otherwise subject to either the life or  
20 property and casualty RBC requirements;**

21 [(6)] (9) "Life and health insurer", any insurance company licensed under chapter 376  
22 or a licensed property and casualty insurer writing only accident and health insurance;

23 [(7)] (10) "NAIC", the National Association of Insurance Commissioners;

24 [(8)] (11) "Negative trend", with respect to life and health insurers, a negative trend over  
25 a period of time, as determined in accordance with the trend test calculations included in the  
26 RBC instructions;

27 [(9)] (12) "Property and casualty insurer", any insurance company licensed under  
28 chapter 379, but such term shall not include monoline mortgage guaranty insurers, financial  
29 guaranty insurers and title insurers;

30 [(10)] (13) "RBC instructions", the RBC report, including risk-based capital instructions  
31 adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time  
32 in accordance with the procedures adopted by the NAIC;

33 [(11)] (14) "RBC level", an [insurer's] **insurer or health organization's** company  
34 action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory  
35 control level RBC where:

36 (a) "Company action level RBC" means, with respect to any insurer **or health  
37 organization**, the product of 2.0 and its authorized control level RBC;

38 (b) "Regulatory action level RBC" means the product of 1.5 and its authorized control  
39 level RBC;

40 (c) "Authorized control level RBC" means the number determined under the risk-based  
41 capital formula in accordance with the RBC instruction; and

42 (d) "Mandatory control level RBC" means the product of .70 and the authorized control  
43 level RBC;

44 [(12)] **(15)** "RBC plan", a comprehensive financial plan containing the elements  
45 specified in subsection 2 of section 375.1255. If the director rejects the RBC plan and it is  
46 revised by the insurer **or health organization**, with or without the director's recommendation,  
47 the plan shall be called the "Revised RBC Plan";

48 [(13)] **(16)** "RBC report", the report required in section 375.1252;

49 [(14)] **(17)** "Total adjusted capital", the sum of:

50 (a) An [insurer's] **insurer or health organization's** statutory capital and surplus as  
51 determined in accordance with the statutory accounting applicable to the annual financial reports  
52 required to be filed under **chapter 354 for health organizations**, section 376.350 for domestic  
53 life and health insurers, section 379.105 for domestic property and casualty insurers and section  
54 375.891 for foreign insurers; and

55 (b) Such other items, if any, as the RBC instructions may provide.

375.1252. 1. Every domestic insurer **and every health organization** shall, on or prior  
2 to each March first, prepare and submit to the director a report of its RBC level as of the end of  
3 the calendar year just ended, in a form and containing such information as is required by the  
4 RBC instructions. In addition, every domestic insurer **and every domestic health organization**  
5 shall file its RBC report:

6 (1) With the NAIC in accordance with the RBC instructions; and

7 (2) With the chief insurance regulatory official in any state in which the insurer **or**  
8 **health organization** is authorized to do business, if such official has notified the insurer **or**  
9 **health organization** of its request in writing, in which case the insurer **or health organization**  
10 shall file its RBC report not later than the later of:

11 (a) Fifteen days from the receipt of notice to file its RBC report with that state; or

12 (b) The filing date.

13 2. A life and health insurer's RBC shall be determined in accordance with the formula  
14 set forth in the RBC instructions. The formula shall take into account and may adjust for the  
15 covariance between:

16 (1) The risk with respect to the insurer's assets;

17 (2) The risk of adverse insurance experience with respect to the insurer's insurance  
18 liabilities and obligations;

19 (3) The interest rate risk with respect to the insurer's business; and

20 (4) All other business risks and such other relevant risks as are set forth in the RBC  
21 instructions. Such risks shall be determined in each case by applying the factors in the manner  
22 set forth in the RBC instructions.

23 3. A property and casualty insurer's RBC shall be determined in accordance with the  
24 formula set forth in the RBC instructions. The formula shall take into account and may adjust  
25 for the covariance between:

26 (1) Asset risk;

27 (2) Credit risk;

28 (3) Underwriting risk; and

29 (4) All other business risks and such other relevant risks as are set forth in the RBC  
30 instructions. Such risks shall be determined in each case by applying the factors in the manner  
31 set forth in the RBC instructions.

32 4. **A health organization's RBC shall be determined in accordance with the formula**  
33 **set forth in the RBC instructions. The formula shall take into account and may adjust for**  
34 **the covariance between:**

35 (1) **Asset risk;**

36 (2) **Credit risk;**

37 (3) **Underwriting risk; and**

38 (4) **All other business risks and such other relevant risks as are set forth in the RBC**  
39 **instructions. Such risks shall be determined in each case by applying the factors in the**  
40 **manner set forth in the RBC instructions.**

41 5. Insurers and health organizations should seek to maintain capital above the RBC  
42 levels required by sections 375.1250 to 375.1275, as such additional capital helps to secure an  
43 insurer against various risks inherent in, or affecting, the business of insurance and not accounted  
44 for or partially measured by the risk-based capital requirements contained in sections 375.1250  
45 to 375.1275.

46 [5.] 6. If a domestic insurer or domestic health organization files an RBC report which  
47 in the judgment of the director is inaccurate, then the director shall adjust the RBC report to  
48 correct the inaccuracy and shall notify the insurer or health organization of the adjustment. The  
49 notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted  
50 is referred to as an "adjusted RBC report".

375.1255. 1. "Company action level event" means with respect to any insurer or health  
2 organization, any of the following events:

3 (1) The filing of an RBC report by the insurer or health organization which indicates  
4 that:

5 (a) The [insurer's] **insurer or health organization's** total adjusted capital is greater than  
6 or equal to its regulatory action level RBC but less than its company action level RBC; or

7 (b) If a life and health insurer, the insurer has total adjusted capital which is greater than  
8 or equal to its company action level RBC but less than the product of its authorized control level  
9 [capital] **RBC and [2.5] 3.0**, and has a negative trend;

10 (c) If a property and casualty insurer, the insurer has total adjusted capital which is  
11 greater than or equal to its company action level RBC but less than the product of its authorized  
12 control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test  
13 calculation included in the property and casualty RBC report instructions;

14 **(d) If a health organization has total adjusted capital which is greater than or equal**  
15 **to its company action level RBC but less than the product of its authorized control level**  
16 **RBC and 3.0 and triggers the trend test determined in accordance with the trend test**  
17 **calculation included in the health RBC instructions;**

18 (2) The notification by the director to the insurer **or health organization** of an adjusted  
19 RBC report that indicates the event in paragraph (a), (b), [or] (c), **or (d)** of subdivision (1) of this  
20 subsection, if the insurer **or health organization** does not challenge the adjusted RBC report  
21 pursuant to section 375.1265;

22 (3) If pursuant to section 375.1265 the insurer **or health organization** challenges an  
23 adjusted RBC report that indicates the event described in subdivision (1) of this subsection, the  
24 notification by the director to the insurer **or health organization** that the director has, after a  
25 hearing, rejected the [insurer's] **insurer or health organization's** challenge.

26 2. In the event of a company action level event the insurer **or health organization** shall  
27 prepare and submit to the director an RBC plan which shall:

28 (1) Identify the conditions in the insurer **or health organization** which contribute to the  
29 company action level event;

30 (2) Contain proposals of corrective actions which the insurer **or health organization**  
31 intends to take and would be expected to result in the elimination of the company action level  
32 event;

33 (3) **(a)** Provide projections of the insurer's financial results in the current year and at  
34 least the four succeeding years, both in the absence of proposed corrective actions and giving  
35 effect to the proposed corrective actions, including projections of statutory operating income, net  
36 income, capital or surplus. The projections for both new and renewal business might include  
37 separate projections for each major line of business and separately identify each significant  
38 income, expense and benefit component;

39 **(b) Provide projections of the health organization's financial results in the current**  
40 **year and at least the two succeeding years, both in the absence of proposed corrective**

41 actions and giving effect to the proposed corrective actions, including projections of  
42 statutory balance sheets, operating income, net income, capital and surplus, and RBC  
43 levels. The projections for both new and renewal business might include separate  
44 projections for each major line of business and separately identify each significant income,  
45 expense, and benefit component;

46 (4) Identify the key assumptions impacting the [insurer's] **insurer or health**  
47 **organization's** projections and the sensitivity of the projections to the assumptions; and

48 (5) Identify the quality of, and problems associated with, the [insurer's] **insurer or**  
49 **health organization's** business, including but not limited to its assets, anticipated business  
50 growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of  
51 reinsurance in each case, if any.

52 3. The RBC plan shall be submitted:

53 (1) Within forty-five days of the company action level event; or

54 (2) If the insurer **or health organization** challenges an adjusted RBC report pursuant  
55 to section 375.1265 within forty-five days after notification to the insurer **or health organization**  
56 that the director has, after a hearing, rejected the [insurer's] **insurer or health organization's**  
57 challenge.

58 4. Within sixty days after the submission by an insurer **or health organization** of an  
59 RBC plan to the director, the director shall notify the insurer **or health organization** whether  
60 the RBC plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the  
61 director determines the RBC plan is unsatisfactory, the notification to the insurer **or health**  
62 **organization** shall set forth the reasons for the determination, and may set forth proposed  
63 revisions which will render the RBC plan satisfactory, in the judgment of the director. Upon  
64 notification from the director, the insurer **or health organization** shall prepare a revised RBC  
65 plan, which may incorporate by reference any revisions proposed by the director, and shall  
66 submit the revised RBC plan to the director:

67 (1) Within forty-five days after the notification from the director; or

68 (2) If the insurer **or health organization** challenges the notification from the director  
69 pursuant to section 375.1265, within forty-five days after a notification to the insurer **or health**  
70 **organization** that the director has, after a hearing, rejected the [insurer's] **insurer or health**  
71 **organization's** challenge.

72 5. In the event of a notification by the director to an insurer **or health organization** that  
73 the [insurer's] **insurer or health organization's** RBC plan or revised RBC plan is unsatisfactory,  
74 the director may at the director's discretion, subject to the [insurer's] **insurer or health**  
75 **organization's** right to a hearing under section 375.1265, specify in the notification that the  
76 notification constitutes a regulatory action level event.

77           6. Every domestic insurer **or domestic health organization** that files an RBC plan or  
78 revised RBC plan with the director shall file a copy of the RBC plan or revised RBC plan with  
79 the chief insurance regulatory official in any state in which the insurer is authorized to do  
80 business if:

81           (1) Such state has an RBC provision, substantially similar to subsection 1 of section  
82 375.1267; and

83           (2) The chief insurance regulatory official of that state has notified the insurer **or health**  
84 **organization** of its request for the filing in writing, in which case the insurer **or organization**  
85 shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

86           (a) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC  
87 plan with the state; or

88           (b) The date on which the RBC plan or revised RBC plan is filed under subsection 3 or  
89 4 of this section.

          375.1257. 1. "Regulatory action level event" means, with respect to any insurer **or**  
2 **health organization**, any of the following events:

3           (1) The filing of an RBC report by the insurer **or health organization** which indicates  
4 that the [insurer's] **insurer or health organization's** total adjusted capital is greater than or equal  
5 to its authorized control level RBC but less than its regulatory action level RBC;

6           (2) The notification by the director to an insurer **or health organization** of an adjusted  
7 RBC report that indicates the event in subdivision (1) of this subsection, if the insurer **or health**  
8 **organization** does not challenge the adjusted RBC report under section 375.1265;

9           (3) If, pursuant to section 375.1265, the insurer **or health organization** challenges an  
10 adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification  
11 by the director to the insurer **or health organization** that the director has, after a hearing,  
12 rejected the [insurer's] **insurer or health organization's** challenge;

13           (4) The failure of the insurer **or health organization** to file an RBC report by the filing  
14 date, unless the insurer **or health organization** has provided an explanation for such failure  
15 which is satisfactory to the director and has cured the failure within ten days after the filing date;

16           (5) The failure of the insurer **or health organization** to submit an RBC plan to the  
17 director within the time period set forth in subsection 3 of section 375.1255;

18           (6) Notification by the director to the insurer **or health organization** that:

19           (a) The RBC plan or revised RBC plan submitted by the insurer **or health organization**  
20 is, in the judgment of the director, unsatisfactory; and

21           (b) Such notification constitutes a regulatory action level event with respect to the insurer  
22 **or health organization**, where the insurer **or health organization** has not challenged the  
23 determination under section 375.1265;

24 (7) If, pursuant to section 375.1265, the insurer **or health organization** challenges a  
25 determination by the director under subdivision (6) of this subsection, the notification by the  
26 director to the insurer **or health organization** that the director has, after a hearing, rejected such  
27 challenge;

28 (8) Notification by the director to the insurer **or health organization** that the insurer **or**  
29 **health organization** has failed to adhere to its RBC plan or revised RBC plan, but only if such  
30 failure has a substantial adverse effect on the ability of the insurer **or health organization** to  
31 eliminate the company action level event in accordance with its RBC plan or revised RBC plan  
32 and the director has so stated in the notification provided the insurer **or health organization** has  
33 not challenged the determination under section 375.1265; or

34 (9) If, pursuant to section 375.1265, the insurer **or health organization** challenges a  
35 determination by the director under subdivision (8) of this subsection the notification by the  
36 director to the insurer **or health organization** that the director has, after a hearing, rejected the  
37 challenge.

38 2. In the event of a regulatory action level event the director shall:

39 (1) Require the insurer **or health organization** to prepare and submit an RBC plan or,  
40 if applicable, a revised RBC plan;

41 (2) Perform such examination or analysis as the director deems necessary of the assets,  
42 liabilities and operations of the insurer **or health organization**, including a review of its RBC  
43 plan or revised RBC plan; and

44 (3) Subsequent to the examination or analysis, issue an order specifying such corrective  
45 actions as the director shall determine are required.

46 3. In determining corrective actions, the director may take into account such factors as  
47 are deemed relevant with respect to the insurer **or health organization** based upon the director's  
48 examination or analysis of the assets, liabilities and operations of the insurer **or health**  
49 **organization**, including, but not limited to, the results of any sensitivity tests undertaken  
50 pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

51 (1) Within forty-five days after the occurrence of the regulatory action level event;

52 (2) If the insurer **or health organization** challenges an adjusted RBC report pursuant  
53 to section 375.1265, within forty-five days after the notification to the insurer **or health**  
54 **organization** that the director has, after a hearing, rejected the [insurer's] **insurer or health**  
55 **organization's** challenge; or

56 (3) If the insurer **or health organization** challenges a revised RBC plan under section  
57 375.1265, within forty-five days after notification to the insurer **or health organization** that the  
58 director has, after a hearing, rejected the challenge.

59           4. The director may retain actuaries and investment experts and other consultants as may  
60 be necessary in the judgment of the director to review the [insurer's] **insurer or health**  
61 **organization's** RBC plan or revised RBC plan, examine or analyze the assets, liabilities and  
62 operations of the insurer **or health organization** and formulate the corrective order with respect  
63 to the insurer **or health organization**. The fees, costs and expenses relating to the consultants  
64 shall be borne by the affected insurer **or health organization**.

375.1260. 1. "Authorized control level event" means any of the following events:

2           (1) The filing of an RBC report by the insurer **or health organization** which indicates  
3 that the [insurer's] **insurer or health organization's** total adjusted capital is greater than or equal  
4 to its mandatory control level RBC but less than its authorized control level RBC;

5           (2) The notification by the director to the insurer **or health organization** of an adjusted  
6 RBC report that indicates the event in subdivision (1) of this subsection provided the insurer **or**  
7 **health organization** does not challenge the adjusted RBC report under section 375.1265;

8           (3) If, pursuant to section 375.1265, the insurer **or health organization** challenges an  
9 adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification  
10 by the director to the insurer **or health organization** that the director has, after a hearing,  
11 rejected the [insurer's] **insurer or health organization's** challenge;

12           (4) The failure of the insurer **or health organization** to respond, in a manner satisfactory  
13 to the director, to a corrective order provided the insurer **or health organization** has not  
14 challenged the corrective order under section 375.1265; or

15           (5) If the insurer **or health organization** has challenged a corrective order under section  
16 375.1265 and the director has, after a hearing, rejected the challenge or modified the corrective  
17 order, the failure of the insurer **or health organization** to respond, in a manner satisfactory to  
18 the director, to the corrective order subsequent to rejection or modification by the director.

19           2. In the event of an authorized control level event the director shall:

20           (1) Take such actions as are required under section 375.1257 regarding an insurer **or**  
21 **health organization** with respect to which a regulatory action level event has occurred; or

22           (2) If the director deems it to be in the best interests of the policyholders and creditors  
23 of the insurer **or health organization** and of the public, take such actions as are necessary to  
24 cause the insurer **or health organization** to be placed under regulatory control under sections  
25 375.1150 to 375.1246. In the event the director takes such actions, the authorized control level  
26 event shall be deemed sufficient grounds for the director to take action pursuant to sections  
27 375.1150 to 375.1246, and the director shall have the rights, powers and duties with respect to  
28 the insurer **or health organization** as are set forth in sections 375.1150 to 375.1246. In the  
29 event the director takes actions under this subdivision pursuant to an adjusted RBC report, the  
30 insurer **or health organization** shall be entitled to such protections as are afforded to insurers

31 **or health organizations** pursuant to the provisions of sections 375.570 to 375.640, provided that  
32 the adjusted RBC report shall be deemed a report of examination.

375.1262. 1. "Mandatory control level event" means, with respect to any insurer **or**  
2 **health organization**, any of the following events:

3 (1) The filing of an RBC report which indicates that the [insurer's] **insurer or health**  
4 **organization's** total adjusted capital is less than its mandatory control level RBC;

5 (2) Notification by the director to the insurer **or health organization** of an adjusted RBC  
6 report that indicates the event in subdivision (1) of this subsection if the insurer **or health**  
7 **organization** does not challenge the adjusted RBC report under section 375.1265; or

8 (3) If, pursuant to section 375.1265, the insurer **or health organization** challenges an  
9 adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification  
10 by the director to the insurer **or health organization** that the director has, after a hearing,  
11 rejected the [insurer's] **insurer or health organization's** challenge.

12 2. In the event of a mandatory control level event the director shall take such actions as  
13 are necessary to place the insurer **or health organization** under regulatory control under sections  
14 375.1150 to 375.1246, or, in the case of a property and casualty insurer which is writing no  
15 business, may allow the insurer to continue its existing policies until expiration of the policy  
16 term and settlement of all outstanding claims under the supervision of the director. In either  
17 event, the mandatory control level event shall be deemed sufficient grounds for the director to  
18 take action pursuant to sections 375.1150 to 375.1246, and the director shall have the rights,  
19 powers and duties with respect to the insurer **or health organization** as are set forth in sections  
20 375.1150 to 375.1246. In the event the director takes actions pursuant to an adjusted RBC  
21 report, the insurer **or health organization** shall be entitled to such protections as are afforded  
22 to insurers **or health organizations** pursuant to the provisions of sections 375.570 to 375.640,  
23 if the adjusted RBC report shall be deemed a report of examination. Notwithstanding any other  
24 provision of this subsection to the contrary, the director may forego action for up to ninety days  
25 after the mandatory control level event if the director finds there is a reasonable expectation that  
26 the mandatory control level event be eliminated within the ninety-day period.

375.1265. 1. Upon:

2 (1) Notification to an insurer **or health organization** by the director of an adjusted RBC  
3 report; or

4 (2) Notification to an insurer **or health organization** by the director that:

5 (a) The [insurer's] **insurer or health organization's** RBC plan or revised RBC plan is  
6 unsatisfactory; and

7 (b) Such notification constitutes a regulatory action level event with respect to such  
8 insurer **or health organization**; or

9 (3) Notification to any insurer **or health organization** by the director that the insurer **or**  
10 **health organization** has failed to adhere to its RBC plan or revised RBC plan and that such  
11 failure has a substantial adverse effect on the ability of the insurer **or health organization** to  
12 eliminate the company action level event with respect to the insurer **or health organization** in  
13 accordance with its RBC plan or revised RBC plan; or

14 (4) Notification to an insurer **or health organization** by the director of a corrective order  
15 with respect to the insurer **or health organization**; the insurer **or health organization** shall have  
16 the right to a confidential departmental hearing, with a record made, at which the insurer **or**  
17 **health organization** may challenge any determination or action by the director. The insurer **or**  
18 **health organization** shall notify the director of its request for a hearing within five days after  
19 the notification by the director pursuant to this subsection. Upon receipt of the [insurer's]  
20 **insurer or health organization's** request for a hearing, the director shall set a date for the  
21 hearing, which date shall be no less than ten nor more than thirty days after the date of the  
22 [insurer's] **insurer or health organization's** request.

23 2. An insurer **or health organization** aggrieved by an order of the director after a  
24 hearing pursuant to subsection 1 of this section may obtain judicial review of such order pursuant  
25 to sections 536.100 to 536.140, except that:

26 (1) No insurer **or health organization** shall be deemed aggrieved unless the director has  
27 either:

28 (a) Made the director's order public; or

29 (b) Taken action pursuant to sections 375.1250 to 375.1275 or pursuant to sections  
30 375.1165 to 375.1246; or

31 (c) Issued a corrective order after the hearing;

32 (2) If the director has taken action as described in paragraph (b) of subdivision (1) of  
33 subsection 1 of this section, judicial review pursuant to this section shall be consolidated with  
34 and be pendent to the action pursuant to the director's action.

35 3. There shall be no judicial review of any action by the director pursuant to sections  
36 375.1250 to 375.1275 except as provided in subsection 2 of this section.

375.1267. 1. All RBC reports, to the extent the information therein is not required to  
2 be set forth in a publicly available annual statement schedule, and RBC plans, including the  
3 results or report of any examination or analysis of an insurer **or health organization** performed  
4 pursuant to this section and any corrective order issued by the director pursuant to examination  
5 or analysis, with respect to any **domestic** insurer [or], foreign insurer, **health organization, or**  
6 **foreign health organization** which are filed with the director constitute information that might  
7 be damaging to the **domestic** insurer [or], foreign insurer, **health organization, or foreign**  
8 **health organization** if made available to its competitors, and therefore shall be kept confidential

9 by the director. This information shall neither be made public nor be subject to subpoena, other  
10 than by the director and then only for the purpose of enforcement actions taken by the director  
11 pursuant to sections 375.1250 to 375.1275 or any other provision of the insurance laws of this  
12 state.

13 2. The comparison of an [insurer's] **insurer or health organization's** total adjusted  
14 capital to any of its RBC levels is a regulatory tool which may indicate the need for possible  
15 corrective action with respect to the **insurer or health organization**, and is not intended as a  
16 means to rank **insurers or health organizations** generally. Therefore, except as otherwise  
17 required pursuant to the provisions of sections 375.1250 to 375.1275, the making, publishing,  
18 disseminating, circulating or placing before the public, or causing directly or indirectly, the  
19 making, publishing, disseminating, circulating or placing before the public, in a newspaper,  
20 magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or  
21 over any radio or television station, or in any other way, an advertisement, announcement or  
22 statement containing an assertion, representation or statement with regard to the RBC levels of  
23 any **insurer or health organization**, or of any component derived in the calculations by any  
24 **insurer or health organization**, agent, broker, or other person engaged in any manner in the  
25 business of insurance would be misleading and is therefore an unfair trade practice as defined  
26 in section 375.934; except that if any materially false statement with respect to the comparison  
27 regarding an [insurer's] **insurer or health organization's** total adjusted capital to its RBC levels  
28 or an inappropriate comparison of any other amount to the [insurer's] **insurer or health**  
29 **organization's** RBC levels is published in any written publication and the **insurer or health**  
30 **organization** is able to demonstrate with substantial proof the falsity of such statement, or the  
31 inappropriateness, as the case may be, then the **insurer or health organization** may publish an  
32 announcement in a written publication if the sole purpose of the announcement is to rebut the  
33 materially false statement.

34 3. The RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised  
35 RBC plans are intended solely for use by the director in monitoring the solvency of **insurers and**  
36 **health organizations** and the need for possible corrective action with respect to **insurers or**  
37 **health organizations** and shall not be used by the director for ratemaking nor considered or  
38 introduced as evidence in any rate proceeding nor used by the director to calculate or derive any  
39 elements of an appropriate premium level or rate of return for any line of insurance which an  
40 insurer, **health organization**, or any affiliate is authorized to write.

41 4. In order to assist in the performance of the director's duties, the director:

42 (1) May share documents, materials, or other information, including the  
43 confidential and privileged documents, materials, or information subject to subsection 1  
44 of this section, with other state, federal, and international regulatory agencies, with the

45 **National Association of Insurance Commissioners and its affiliates and subsidiaries, and**  
46 **with state, federal, and international law enforcement authorities, provided that the**  
47 **recipient agrees to maintain the confidentiality and privileged status of the document,**  
48 **material, or other information;**

49 **(2) May receive documents, materials, or other information, including otherwise**  
50 **confidential and privileged documents, materials, or information from the National**  
51 **Association of Insurance Commissioners and its affiliates and subsidiaries and from**  
52 **regulatory and law enforcement officials of other foreign or domestic jurisdictions, and**  
53 **shall maintain as confidential or privileged any document, material, or information**  
54 **received with notice or the understanding that it is confidential or privileged under the**  
55 **laws of the jurisdiction that is the source of the document, material, or information; and**

56 **(3) May enter into agreements governing sharing and use of information consistent**  
57 **with this subsection.**

58 **5. No waiver of any applicable privilege or claim of confidentiality in the**  
59 **documents, materials, or information shall occur as a result of disclosure to the director**  
60 **under this section or as a result of sharing as authorized in subdivision (3) of subsection**  
61 **4 of this section.**

375.1269. 1. The provisions of sections 375.1250 to 375.1275 are supplemental to any  
2 other provisions of the laws of this state, and shall not preclude or limit any other powers or  
3 duties of the director under such laws, including but not limited to sections 375.1150 to  
4 375.1246.

5 2. The director may adopt reasonable rules and regulations necessary for the  
6 implementation of sections 375.1250 to 375.1275. No rule or regulation promulgated under  
7 authority of this section shall become effective unless it has been promulgated pursuant to the  
8 provisions of section 536.024.

9 3. The director may exempt from the provisions of sections 375.1250 to 375.1275 any  
10 domestic property and casualty insurer which:

11 (1) Writes direct business only in this state;

12 (2) Writes direct annual premiums of two million dollars or less; and

13 (3) Assumes no reinsurance in excess of five percent of direct premium written.

14 4. **The director may exempt from the provisions of sections 375.1250 to 375.1275**  
15 **any domestic health organization that:**

16 (1) **Writes direct business only in this state; and**

17 (2) **Writes direct annual premiums of two million dollars or less; and**

18 (3) **Assumes no reinsurance in excess of five percent of direct premium written; or**

19 (4) **Is a limited health service organization that covers less than two thousand lives.**

20           5. There shall be no liability on the part of, and no cause of action shall arise against, the  
21 director, the department of insurance, financial institutions and professional registration or its  
22 employees or agents for any action taken by them in the performance of their powers and duties  
23 under sections 375.1250 to 375.1275.

          375.1270. 1. Any foreign insurer **or foreign health organization** shall, upon the written  
2 request of the director, submit to the director an RBC report as of the end of the calendar year  
3 just ended the later of:

4           (1) The date an RBC report would be required to be filed by [an] **a domestic insurer or**  
5 **domestic health organization** under sections 375.1250 to 375.1275; or

6           (2) Fifteen days after the request is received by the foreign insurer **or foreign health**  
7 **organization**.

8           2. Any foreign insurer **or foreign health organization** shall, at the written request of  
9 the director, promptly submit to the director a copy of any RBC plan that is filed with the chief  
10 insurance regulatory official of any other state.

11           3. In the event of a company action level event regulatory action level event or  
12 authorized control level event with respect to any foreign insurer **or foreign health organization**  
13 as determined under the RBC statute applicable in the state of domicile of the insurer or, if no  
14 RBC provision is in force in that state, under the provisions of sections 375.1250 to 375.1275,  
15 if the chief insurance regulatory official of the state of domicile of the foreign insurer **or foreign**  
16 **health organization** fails to require the foreign insurer **or foreign health organization** to file  
17 an RBC plan in the manner specified under the RBC statute or, if no RBC provision is in force  
18 in the state, under section 375.1255, the director may require the foreign insurer **or foreign**  
19 **health organization** to file an RBC plan with the director. In such event, the failure of the  
20 foreign insurer **or foreign health organization** to file an RBC plan with the director shall be  
21 grounds to order the insurer **or foreign health organization** to cease and desist from writing  
22 new insurance business in this state, pursuant to the procedures set forth in section 374.046.

23           4. In the event of a mandatory control level event with respect to any foreign insurer **or**  
24 **foreign health organization**, if no domiciliary receiver has been appointed with respect to the  
25 foreign insurer **or foreign health organization** under the rehabilitation and liquidation statute  
26 applicable in the state of domicile of the foreign insurer **or foreign health organization**, the  
27 director may make application to the circuit court of Cole County permitted pursuant to section  
28 375.1234 with respect to the liquidation of property of foreign insurers **or foreign health**  
29 **organizations** found in this state, and the occurrence of the mandatory control level event shall  
30 be considered adequate grounds for the application.

          375.1272. All notices by the director to an insurer **or health organization** which may  
2 result in regulatory action under sections 375.1250 to 375.1275 shall be effective upon dispatch

3 if transmitted by registered or certified mail, or in the case of any other transmission shall be  
4 effective upon the [insurer's] **insurer or health organization's** receipt of such notice.

375.1275. 1. For RBC reports required to be filed by life and health insurers with respect  
2 to 1993, the following requirements shall apply in lieu of the provisions of section 375.1255:

3 (1) In the event of a company action level event with respect to an insurer, the director  
4 shall take no regulatory action;

5 (2) In the event of a regulatory action level event pursuant to section 375.1257, the  
6 director shall take the actions required pursuant to section 375.1255;

7 (3) In the event of a regulatory action level event pursuant to section 375.1257 or an  
8 authorized control level event, the director shall take the actions required pursuant to section  
9 375.1257 with respect to the insurer;

10 (4) In the event of a mandatory control level event with respect to an insurer, the director  
11 shall take the actions required pursuant to section 375.1260 with respect to the insurer.

12 2. For RBC reports required to be filed by property and casualty insurers with respect  
13 to 1996, the following requirements shall apply in lieu of the provisions of sections 375.1255 to  
14 375.1262:

15 (1) In the event of a company action level event with respect to a domestic insurer, the  
16 director shall take no regulatory action under sections 375.1250 to 375.1275;

17 (2) In the event of a regulatory action level event under subdivision (1), (2) or (3) of  
18 subsection 1 of section 375.1257, the director shall take the actions required under section  
19 375.1255;

20 (3) In the event of a regulatory action level event under subdivision (4), (5), (6), (7), (8)  
21 or (9) of subsection 1 of section 375.1257 or an authorized control level event, the director shall  
22 take the actions required under section 375.1257, with respect to the insurer;

23 (4) In the event of a mandatory control level event, the director shall take the actions  
24 required under section 375.1260 with respect to the insurer.

25 3. **For RBC reports required to be filed by health organizations with respect to**  
26 **2014, the following requirements shall apply in lieu of the provisions of sections 375.1255**  
27 **to 375.1262:**

28 (1) **In the event of a company action level event with respect to a domestic health**  
29 **organization, the director shall take no regulatory action;**

30 (2) **In the event of a regulatory action level event under subdivisions (1) to (3) of**  
31 **subsection 1 of section 375.1257, the director shall take the actions required pursuant to**  
32 **section 375.1255;**

33           **(3) In the event of a regulatory action level event under subdivisions (4) to (9) of**  
34 **subsection 1 of section 375.1257 or an authorized control level event, the director shall take**  
35 **the actions required under section 375.1257 with respect to the health organization;**

36           **(4) In the event of a mandatory control level event with respect to a health**  
37 **organization, the director shall take the actions required under section 375.1260 with**  
38 **respect to the health organization.**

39           **4.** The actions required under sections 375.1255 to 375.1262 or this section shall not  
40 apply to any insurer operating under the provisions of sections 287.900 to 287.920 which is  
41 under any order of supervision, including waivers of requirements for capital and surplus, issued  
42 or commenced by the director prior to August 28, 1996. This provision shall remain in effect  
43 until such order or proceeding expires or is otherwise terminated by further order of the director.

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